

Notice of Allowability

Application No.

10/086,067

Examiner

Dawn Garrett

Applicant(s)

HOAG ET AL.

Art Unit

1774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the response dated May 19, 2004.
2. ☒ The allowed claim(s) is/are 1-5,8-15 and 17-28.
3. ☒ The drawings filed on 2-28-02 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

REASONS FOR ALLOWANCE

1. Upon further consideration, the rejection under 35 USC 112, first paragraph set forth in the last Office action is withdrawn. In addition to the support argued by applicant, the definition of X^a and X^b in original claim 14 provides support for the claim 1 language. The original definition of Y and paragraph bridging pages 10-12 of the specification provides support for claim 27.

2. The double patenting rejection previously set forth in the last Office action is withdrawn. Upon further review, it is seen that the nitrogen-containing heterocycle ring of the compounds shown in U.S. Patent No. 6,661,023 comprises three nitrogens whereas the bis(azinyl)methene compounds of the present application comprise a heterocycle ring with only two nitrogens.

3. The following is an examiner's statement of reasons for allowance:

The closest prior art is considered to be Sathyamoorthi et al., Heteroatom Chemistry, Vol. 4, No. 6, pages 603-608, (1993). Heteroatom Chemistry teaches a fluorescent compound "3" which is the same as applicant's inventive compound 5 (Inv-5) discussed in the written disclosure. The dye disclosed by Heteroatom Chemistry does not contain a ring fused to one of the azinyl groups as now required. Accordingly, claims 1-5, 8-15, and 17-28 are allowed.

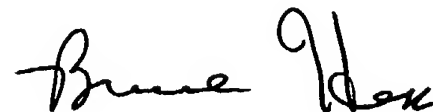
4. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Art Unit: 1774

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dawn Garrett whose telephone number is 571-272-1523. The examiner can normally be reached Monday through Friday during normal business hours. Please allow the examiner twenty-four hours to return your call.

If reasonable attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye, can be reached at 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



BRUCE H. HESS
PRIMARY EXAMINER


D.G.

July 23, 2004